Tax Credits Expiring in 2008-2009

Revenue Laws Study Committee
April 2, 2008

Tax Credit	Cite	Sunset	FY Revenue Loss ($ millions)
Credit for NC research & development	105-129.55 105-129.51(b)	1/1/2009	$1.0-$2.2
Credit for NC Ports Authority[1]	105-130.41 105-151.22	1/1/2009	$0.5 -$2.5
Credit for small business employee health benefits	105-129.16E	1/1/2009	No data available[2]
Credit for reinvestment	105-129.28	1/1/2008	$5.0

[1] The sunset for this credit has been extended six times.

[2] There is no data available because the credit did not become effective until tax years beginning on or after January 1, 2007. The credit would likely be claimed in 2008 when most taxpayers file their 2007 returns. However, when the bill was enacted, the estimated cost was $17.8 million for FY0809.

State Ports Tax Credit

§ 105-130.41; § 105-151.22

Eligibility. – The State Ports tax credit is allowed to a taxpayer who loads or unloads waterborne cargo from an ocean carrier at the State-owned port terminal at Wilmington or Morehead City. The credit is allowed against the taxpayer's income tax. The taxpayer may be either an individual or a corporation.

Credit Amount. – The amount of the tax credit is equal to the amount of wharfage, handling, and throughput charges paid to the North Carolina State Ports Authority in the taxable year that exceeds the average amount of charges paid to the Authority for the current tax year and the two previous tax years. The credit is limited to 50% of the tax imposed on the taxpayer for the taxable year. Any excess credit may be carried forward and applied to the taxpayer's income tax liability for the next five years. The maximum cumulative credit that one taxpayer may claim is $2 million.

Sunset. – The credit sunsets for taxable years beginning on or after January 1, 2009.

Definitions. – Although not defined by the relevant statutes, the various types of cargo differ as follows:

- <u>Bulk cargo</u> is a type of commodity that is loose and usually stockpiled. Examples of this type of commodity include coal, grain, salt, and wood chips.
- <u>Break-bulk cargo</u> consists of commodities that are packaged and stored on pallets or in cases that must be handled and stacked onto a ship by hand, crane, etc. Break-bulk cargo also includes machinery.
- <u>Container cargo</u> consists of commodities that are packaged in a metal trailer box that can be locked onto a tractor-trailer chassis and then detached and put on a ship without any other handling.

Legislative History. –

1992 The General Assembly enacted the State Ports tax credit to encourage exporters to use the two State-owned port terminals in Wilmington and Morehead City. When enacted, the credit applied to amounts paid by a taxpayer on any cargo exported at either port. When first enacted, this credit was effective for taxable years beginning on or after March 1, 1992, and ending on or before February 28, 1996.

1994 The General Assembly expanded the credit to include all amounts assessed on exported cargo, regardless of who paid the shipping costs.

1995 The General Assembly expanded the credit to include some imports by allowing a credit for break-bulk cargo and container cargo imported at either Wilmington or Morehead City and for bulk cargo imported at Morehead City. It did not allow a credit for bulk cargo imported at Wilmington. In addition, the credit for bulk exports was then limited to bulk exports at only the Morehead City terminal.

1996 The General Assembly expanded the State Ports tax credit to include the importing and exporting at either terminal of one specific type of bulk cargo: forest products. All imports and exports of bulk cargo at the Morehead City terminal were already covered, so the effect of this change was to allow a credit for forest product imports and exports at the Wilmington terminal.

1997 The General Assembly extended the sunset of the State ports income tax credit from February 28, 1998 to the taxable year ending on or before February 28, 2001, and increased the maximum cumulative credit from $1 million to $2 million per taxpayer.

2001 The sunset was extended to January 1, 2003.

2002 The sunset was extended to January 1, 2004.

2003 The sunset was extended to January 1, 2009.

2005 Effective January 1, 2007, the Department of Revenue is required to publish annually the following information itemized by taxpayer for the 12-month period ending the preceding December 31:

(1) The number of taxpayers taking a credit allowed in this section.
(2) The total amount of charges with respect to which credits were taken.
(3) The total cost to the General Fund of the credits taken.

2007 The reporting requirement in (2) above was modified to state "the total amount of charges assessed for the taxable year" to better enable the Tax Research Division to report information for the General Assembly to use in determining the credit's effectiveness.

Credit for Research and Development

§ 105-129.55; §105-129.51(b)

Eligibility. – Effective for expenses on or after May 1, 2005, a taxpayer that has qualified North Carolina research expenses or North Carolina University research expenses is allowed a credit. The taxpayer must satisfy Bill Lee Act requirements related to employee wages, the provision of health insurance, the taxpayer's Occupational Safety and Health Act record, and the taxpayer's environmental record. The taxpayer is not required to have no overdue tax debts.

Credit Amount. – For North Carolina university research expenses, the credit amount is equal to 20% of the amount the taxpayer paid to the university for the research and development. For all other qualified research expenses, the credit is equal to a percentage of the expenses as follows:

- For small businesses[3], the rate is 3.25%.
- For research and development conducted in a development tier one area, the rate is 3.25%.
- For other research and development expenditures, the rate ranges from 1.25% to 3.25% as the amount of those expenditures increases.

Sunset. – The credit sunsets for taxable years beginning on or after January 1, 2009.

Reporting Requirement. – The Department of Revenue is required to make annual reports to the Revenue Laws Study Committee and the Fiscal Research Division.

Legislative History. –

2004 The General Assembly enacted this new research and development tax credit as an alternative to the Bill Lee research and development credit, which was set to expire along with the entire Bill Lee Act as of January 1, 2006.

2006 The General Assembly enacted a change to conform the credit to the new tier structure under Article 3J. With this change, research conducted in a development tier one area is eligible for a more generous credit.

2007 Effective for taxable years beginning on or after January 1, 2007, the credit amounts were increased by .25% for each of the categories and by 5% for university research expenses.

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[3] A small business is a business whose annual receipts, combined with the annual receipts of all related persons, does not exceed $1,000,000.

<u>Small Business Employee Health Benefits</u>

§ 105-129.16E

Eligibility. – Effective for taxable years beginning on or after January 1, 2007, a small business that provides health benefits to all of its full-time employees is eligible for a tax credit. Under the Internal Revenue Code, an employer may deduct premiums paid for health insurance cost of its employees as a business expense. The credit is in addition to any expense deduction the taxpayer claimed on its income tax return for the health insurance costs.

Credit Amount. – The credit amount is equal to $250 per employee for whom the taxpayer pays the health insurance premium, not to exceed the taxpayer's cost of providing the health insurance benefit. The taxpayer may use the credit against either its income tax or its franchise tax liability. The credit may not exceed 50% of the taxpayer's tax liability. Any unused portions of the credit may be carried forward for five years. The credit is effective for taxable years beginning on or after January 1, 2007.

Sunset. – It expires for taxable years beginning on or after January 1, 2009.

Definitions. –

- A <u>small business</u> is a taxpayer that employs no more than 25 full-time employees.
- An <u>eligible employee</u> is one that works a normal workweek of 30 or more hours and whose total wages or salary received from the business does not exceed $40,000 on annual basis.
- <u>Providing health benefits</u> means one or more of the following:
  - The taxpayer pays at least 50% of the premiums for health insurance coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee.
  - The employee has existing coverage under one or more of the following: Medicare; Medicaid; a government funded program; a health insurance or benefit arrangement that provides benefits similar to or in excess of benefits provided under the basic health care plan.

Legislative History. –

2006 The General Assembly enacted the credit.

2007 A technical change was made to the credit.

Credit for Reinvestment by Recycling Facility

§ 105-129.28

Eligibility. – Beginning with the 1998 tax year, a major recycling facility that is accessible by neither ocean barge nor ship and that and incurs additional expenses due to transporting its materials and products by alternative modes of transportation is allowed a refundable corporate income tax reinvestment credit. For the first ten years the reinvestment credit is in effect, a major recycling facility must use the amount received in credit to invest in rail and roads associated with the facility, in transportation infrastructure to reduce the expense of transporting materials and products to and from the facility, or in land and infrastructure for industrial sites, other than the facility itself, in the same county. If there are not enough reasonable opportunities for investments in those purposes in a given year, however, the major recycling facility may invest the amount of credit received in the facility itself, but only after it has made the minimum investment of $300 million required to qualify as a major recycling facility. The facility must document its compliance with this reinvestment requirement and it forfeits any part of the credit it spends for another purpose.

Credit Amount. – The reinvestment credit is equal to the amount of these additional expenses, which must be documented annually to the Secretary of Commerce. The credit is subject to a dollar cap each year, in increasing amounts. In 1999, the cap was $640,000. In 2004, the cap leveled off at $10.4 million a year.

Sunset. – The credit expired for taxable years beginning on or after January 1, 2008. According to S.L. 1998-55, the purpose of the ten-year sunset was to allow a determination as to whether any major recycling facility continues to experience additional transportation and transloading expenses due to its inability to use ocean barges or ships. The intent is to postpone the sunset if any major recycling facility can document that it is still experiencing additional expenses in 2008 due to its inability to use ocean barges or ships to transport materials and products.

Legislative History. – No changes have been made since its original enactment in 1998.